IN THE UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF IOWA CENTRAL DIVISION

STANLEY CARTER LIGGINS,

Petitioner,

No. 4:01-cy-40166

VS.

LEONARD GRAVES,

Respondent.

ORDER DENYING PETITION FOR HABEAS RELIEF

Stanley Carter Liggins petitions the Court for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Liggins also asks the Court to reconsider its prior order denying him further discovery and an evidentiary hearing. The Court denies Liggins' motion. For the following reasons, the Court denies the petition.

BACKGROUND

On September 17, 1990, nine-year-old Jennifer Lewis disappeared after buying a pack of gum at about 6:30 p.m. at a liquor store in Rock Island, Illinois. At approximately 9:00 p.m. that evening, her badly burned body was found on the grounds of a

¹ The Court has reviewed <u>Banks v. Dretke</u>, 2004 WL 330040 (No. 02-8286, February 24, 2004), as sought by Petitioner's Supplement to Briefs and Motion to Reconsider Discovery and Evidentiary Hearing, and finds the case is readily distinguishable and provides no basis for reconsideration of the Court's December 9, 2002, Order.

school in Davenport, Iowa. She had been sexually abused, strangled to death, wrapped in a plastic garbage bag, and set afire.

Liggins was charged and convicted in Scott County, Iowa, with first-degree murder, willful injury, first-degree sexual abuse, and first-degree kidnapping in connection with Jennifer's death. On appeal, the Iowa Supreme Court reversed the convictions for willful injury, sexual abuse, and kidnapping because the State failed to prove those crimes occurred in Iowa. It reversed the murder conviction because the trial court erroneously admitted evidence that Liggins was a cocaine dealer. State v. Liggins, 524 N.W.2d 181, 186, 188-89 (Iowa 1994) (Liggins I).

On retrial, the State prosecuted Liggins only for murder. The prosecution relied on theories of premeditated murder as well as felony murder predicated on Liggins' participation in the crimes of kidnapping, sexual abuse, and willful injury. A jury found Liggins guilty, and the Iowa Supreme Court affirmed the conviction. State v. Liggins, 557 N.W.2d 263 (Iowa 1996) (Liggins II).

Liggins sought postconviction relief, which the Iowa courts denied. <u>Liggins v.</u>

<u>State</u>, No. 99-1188, 2000 WL 1827164 (Iowa Ct. App. Dec. 13, 2000) (<u>Liggins III</u>).

Liggins then filed for federal habeas relief under 28 U.S.C. § 2254. The undersigned denied Liggins' request for further discovery and an evidentiary hearing. Liggins' grounds for relief are ready for ruling.

DISCUSSION

Before obtaining federal habeas corpus review, a petitioner must "exhaust" the federal claim in the appropriate state forum, see 28 U.S.C. § 2254(b), (c), by fairly presenting to the state courts the substance of the federal claim. See Krimmel v. Hopkins, 56 F.3d 873, 875-76 (8th Cir.), cert. denied, 516 U.S. 1015 (1995). A petitioner must give "the highest state court a fair opportunity to rule on the factual and theoretical substance of his claim," id. at 876 (quotation marks omitted). A petitioner must have alerted the state court to the federal issue by at least referring to the United States Constitution or federal case law. Wyldes v. Hundley, 69 F.3d 247, 251 (8th Cir. 1995), cert. denied, 517 U.S. 1172 (1996).

In addition, a federal court "will not review a question of federal law decided by a state court if the decision of that court rests on a state law ground that is independent of the federal question and adequate to support the judgment." Coleman v. Thompson, 501 U.S. 722, 729 (1991). When a petitioner has defaulted a federal claim under such a state rule, a federal court cannot review the claim unless the petitioner shows cause for the default and actual prejudice as a result of the underlying federal violation, or unless the petitioner shows a fundamental miscarriage of justice will result if the claim is not reviewed. Coleman, 501 U.S. at 750. The miscarriage of justice exception is a narrow standard concerned with a petitioner's actual innocence of the crime. See Schlup v.

Delo, 513 U.S. 298, 327 (1995) (defining actual innocence standard when used as a gateway to review of the merits of a constitutional claim in a death penalty case). A petitioner must "support his allegations of constitutional error with new reliable evidence . . . not presented at trial," Schlup, 513 U.S. at 324, and "show that it is more likely than not that no reasonable juror would have convicted him in the light of the new evidence," id. at 327. "The evidence is new only if it was not available at trial and could not have been discovered earlier through the exercise of due diligence." Amrine v. Bowersox, 128 F.3d 1222, 1230 (8th Cir. 1997) (en banc), cert. denied, 523 U.S. 1123 (1998). Petitioners rarely can meet the high standard required to show actual innocence. Schlup, 513 U.S. at 324.

For claims properly before a federal court, a writ of habeas corpus shall be granted only if the prior adjudication of the claim:

- (1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or
- (2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.

28 U.S.C. § 2254(d). Under the "unreasonable application" standard, this Court may grant the writ only if the state court identified the correct governing legal principle but applied that principle to the facts of a petitioner's case in an objectively unreasonable

way. See Williams v. Taylor, 529 U.S. 362, 411-13 (2000) (O'Connor, J., delivering the opinion of the Court with respect to Part II). "Unreasonable" means something more than an "erroneous" or "incorrect" application of clearly established law, and a reviewing federal court may not substitute its judgment for the state court's, even if the federal court, in its own judgment, disagrees with the state court's decision. Id.; see also Lockyer v. Andrade, 123 S. Ct. 1166, 1175 (2003) (same). Factual findings of a state court "shall be presumed to be correct" and can be rebutted only "by clear and convincing evidence." 28 U.S.C. § 2254(e)(1).

I. Assistance of Counsel. Liggins argues his trial and appellate counsel provided constitutionally ineffective assistance by failing to challenge the change of venue from Scott County, Iowa, to Dubuque County, Iowa. Liggins maintains that Dubuque County was a hotbed of racial prejudice, and Liggins, who is African American, could not get a fair trial in Dubuque County. The Iowa Court of Appeals ruled counsel was not ineffective in failing to raise a meritless argument. Liggins III, 2000 WL 1827164, at *10. The issue was preserved for federal review.

To demonstrate ineffective assistance of counsel claim, Petitioner must show (1) counsel's representation was deficient, and (2) the deficiency prejudiced Petitioner. Strickland v. Washington, 466 U.S. 668, 687 (1984). After review of the record of the jury selection, the undersigned concludes the Iowa courts' decision was a reasonable

application of Strickland. Liggins provides little support for presuming that the jury was prejudiced against him. E.g., Irvin v. Dowd, 366 U.S. 717, 727 (1961) (when circumstances and publicity before and during the trial pervade and corrupt the criminal proceedings, or a juror's professed impartiality cannot be credible, the jury must be deemed unfair and the prejudice fatal to the trial). It was the duty of the trial judge in Liggins' case to decide whether a juror could "lay aside his impression or opinion and render a verdict based on the evidence presented in court." <u>Id.</u> at 723. The parties spent a full day individually examining the potential jurors, and, as Liggins' counsel recognized, the judge was quick to excuse any juror who exhibited signs of bias. (1995 Trial Tr. at 13-190.) Liggins III, 2000 WL 1827164, at *10. Liggins does not show "clear and convincing evidence," see 28 U.S.C. § 2254(e)(1), that the judge's factual findings of impartiality were incorrect. The record does not support a conclusion that the trial judge and trial counsel were unable to select a jury adequately free of racial prejudice to provide a fair trial. There is no basis upon which to conclude this issue had merit. The Iowa courts' ruling was not unreasonable, and Liggins' challenge to counsel's performance is not a basis for habeas relief.

II. Territorial Jurisdiction. Liggins argues there was insufficient evidence for the jury to determine beyond a reasonable doubt that Jennifer died in Iowa; therefore,

the State did not have territorial jurisdiction to prosecute him. Liggins' challenge was preserved for federal review.

Under Iowa law, a person is subject to criminal prosecution if "[t]he offense is committed either wholly or partly within this state." Iowa Code § 803.1(1)(a). In Liggins' appeal of the first trial, the Iowa Supreme Court held territorial jurisdiction is an essential element of the crime and must be proved beyond a reasonable doubt. Liggins <u>I</u>, 524 N.W.2d at 184-85. The court explained that Iowa Code § 803.1(2) (1993), which provides that "[i]f the body of a murder victim is found within the state, the death is presumed to have occurred within the state," expands on the theory of territorial jurisdiction and creates a permissive rebuttable presumption of state jurisdiction. Id. at 185. The trial court instructed the jury, "The law of the State of Iowa presumes that if a body is found within this state, the death occurred within the state. You are therefore allowed, but not required, to conclude that the death of Jennifer Lewis occurred within the State of Iowa." Id. The Iowa Supreme Court rejected Liggins' argument that the jury instruction used at trial created a mandatory, rather than permissive, presumption based on the location where Jennifer's body was found. <u>Id.</u> at 185. The court went on to hold there was sufficient evidence for the jury to infer the State had territorial jurisdiction to prosecute Liggins for Jennifer's murder. Without a similar presumption for the other crimes charged, however, the court held there was not sufficient evidence to infer territorial jurisdiction to prosecute Liggins on the willful injury, sexual abuse, or kidnapping charges. <u>Id.</u> at 185-86.

At Liggins' retrial, the trial court again instructed the jury that, "If you find that Jennifer Lewis' body was found within the State of Iowa, you are allowed, but not required, to conclude that the death of Jennifer Lewis occurred within the State of Iowa." Liggins II, 557 N.W.2d at 266. On appeal of his second trial, Liggins again argued there was insufficient evidence of territorial jurisdiction to corroborate the permissive inference that Jennifer died in Iowa. Relying on its earlier ruling, the Iowa Supreme Court rejected Liggins' argument stating,

Jennifer's body was found in Davenport, Iowa. Further, the evidence in the record does not conclusively establish if she was killed in Iowa or Illinois. We conclude that there was sufficient evidence to establish Iowa's territorial jurisdiction on the murder charge and that Liggins did not rebut the statutory presumption.

Liggins II, 557 N.W.2d at 266-67.

In this federal action, Liggins argues the only evidence that Jennifer was killed in Iowa was the location of her body. Especially in light of the Iowa Supreme Court's ruling that there was insufficient evidence the willful injury occurred in Iowa,² Liggins

² The obvious, but central, distinction between a prosecution for murder and that for willful injury or sexual abuse is the availability of a victim to provide the location of the offense. The law does not allow a perpetrator to frustrate prosecution by causing a victim's unavailability and raising a question of where the death occurred when other evidence in the record is consistent with the rebuttable presumption in Section 803.1(4).

argues the statutory inference, alone, is not enough to establish beyond a reasonable doubt that Jennifer was killed in Iowa. In response, Respondent argues the United States Constitution does not require proof of territorial jurisdiction beyond a reasonable doubt. Instead, Respondent argues, the State of Iowa need only show by a preponderance of the evidence that it has territorial jurisdiction to prosecute Liggins for murder.³ Respondent adds that even if a higher standard is required, there was sufficient evidence for the jury to find beyond a reasonable doubt that Jennifer died in Iowa.

Section 803.1(4) was patterned after the Model Penal Code. Compare Iowa Code § 803.1(4) with Model Penal Code § 1.03(4) (1985). The statute is aimed at preventing the dismissal of charges in cases, such as this one, where the body of the victim is found within the state but it is unclear where the death occurred. Model Penal Code § 1.03(4), cmt. 8. To meet this problem, the statute creates a presumption that the death took place where the body is found. Id. "The presumption insures that a murder defendant cannot confound the courts and avoid or delay prosecution by murdering his victim in one state and dragging the dead body into another." McKinney v. State, 553 N.E.2d 860, 862 (Ind. Ct. App. 1990). The statutory presumption does not dispense with a jury finding

³ Because the Iowa Supreme Court already has decided that territorial jurisdiction is an element of the crime of murder that must be proved beyond a reasonable doubt, this Court need not resolve the question of the burden of proof. See, e.g., Cokeley v. Lockhart, 951 F.2d 916, 920 (8th Cir. 1991) (interpretation of a state criminal statute "lies distinctly within the province of the state court"), cert. denied, 506 U.S. 904 (1992).

beyond a reasonable doubt of the ultimate fact of territorial jurisdiction. Rather, "it permits such a finding upon proof of the body, and the jury is so instructed, unless the court is satisfied that the evidence as a whole clearly negatives the presumed fact." Model Penal Code § 1.03(4) cmt. 8. "If the defendant wants to defeat jurisdiction, he generally must make some showing as to where the death took place. That showing may, in turn lay the predicate for a proceeding in the proper jurisdiction." <u>Id.</u>

"[T]he Due Process Clause protects the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged." In re Winship, 397 U.S. 358, 364 (1970). "This bedrock, axiomatic, and elementary [constitutional] principle prohibits the State from using evidentiary presumptions in a jury charge that have the effect of relieving the State of its burden of persuasion beyond a reasonable doubt of every essential element of a crime." Francis v. Franklin, 471 U.S. 307, 313 (1985) (citations and quotation marks omitted). "A permissive inference does not relieve the State of its burden of persuasion because it still requires the State to convince the jury that the suggested conclusion should be inferred based on the predicate facts proved." Id. at 314. Such an inference "violates the Due Process Clause only if the suggested conclusion is not one that reason and common sense justify in light of the proven facts before the jury." Id.; see also County Court of Ulster County, N.Y. v. Allen, 442 U.S. 140, 157-63 (1979).

As applied to the facts of this case, the presumption of territorial jurisdiction over the first-degree murder charge was rational. As the Iowa Supreme Court observed, the evidence in the record did not conclusively establish whether Jennifer died in Iowa or Illinois. <u>Liggins II</u>, 557 N.W.2d at 266. Within a few hours of her disappearance, however, she was found in Davenport, Iowa, less than a ten-minute drive from where she was last seen and less than a fifteen-minute drive from Liggins' apartment in Illinois. The killer manually strangled Jennifer to death, and the State's pathologist testified that death from manual strangulation occurs within a matter of a few minutes. Additionally, Liggins was in the area of Jennifer's kidnapping when it happened, and the kidnapping occurred less than a ten-minute drive from Liggins' apartment. Between Jennifer's disappearance at approximately 6:30 p.m. and the earliest sightings of the fire at approximately 8:15 p.m. or 8:30 p.m., Liggins had ample opportunity to commit the offense in Iowa. Under these circumstances, there was a "rational connection" between the basic fact proved, that is, the location of Jennifer's body, and the ultimate fact presumed, that is, her death occurred in Iowa. See <u>Ulster County</u>, 442 U.S. at 165. The Iowa Supreme Court's ruling, therefore, is not contrary to, or an unreasonable application of, clearly established federal law, as determined by the Supreme Court.

III. Jury Instruction. Liggins maintains Jury Instruction No. 23 caused the jury to misunderstand the proof necessary to establish jurisdiction and violated Liggins'

right to due process. To convict Liggins of first-degree murder, the prosecution had to show beyond a reasonable doubt that Liggins:

- (a) acted willfully, deliberately, premeditatedly and with a specific intent to kill Jennifer Lewis; or
- (b) was participating in the offense of Willful Injury, Sexual Abuse, or Kidnapping of or to Jennifer Lewis as defined in Instruction No. 23.

(Jury Instruction No. 17; 1995 Tr. App. at 220.) Under the felony-murder theory, the State had to prove beyond a reasonable doubt that the death occurred while Liggins "was participating in" one of the forcible felonies of kidnapping, sexual abuse, or willful injury. Instruction 23 defined the phrase "participating in" a forcible felony as follows: "A person participates in an offense beginning with the first act done toward the commission of the offense and ending when a person has been arrested or has escaped from pursuers." (Jury Instruction 23; 1995 Tr. App. at 221.)

Liggins initially sought federal review of Instruction 23 "under the auspices of a grave miscarriage of justice and actual innocence." (Petr's Br. at 28.) In his reply to Respondent's brief, however, Liggins argues he raised a due process challenge to Instruction 23 in Liggins I and the Iowa Supreme Court refused to address it, and therefore it would have been futile for him to challenge the instruction in Liggins II as a federal constitutional question.

"The simplest way to decide a case is often the best." <u>Chambers v. Bowersox</u>, 157 F.3d 560, 564 n.4 (8th Cir. 1998) (en banc), <u>cert. denied</u>, 527 U.S. 1029 (1999). Because it is easier to resolve Liggins' challenge to Instruction No. 23 on the merits, the court bypasses the procedural hurdles to review of it. <u>See Barrett v. Acevedo</u>, 169 F.3d 1155, 1162 (8th Cir.) ("judicial economy sometimes dictates reaching the merits if the merits are easily resolvable against a petitioner while the procedural bar issues are complicated"), <u>cert. denied</u>, 528 U.S. 846 (1999).

Issues of state law normally govern questions concerning jury instructions in state court criminal proceedings. See Estelle v. McGuire, 502 U.S. 62, 67-68 (1991) (federal habeas court may not "reexamine state-court determinations on state-law questions"). "Habeas corpus relief may be granted only when an erroneous jury instruction constituted a fundamental defect that resulted in a complete miscarriage of justice, [or] an omission inconsistent with rudimentary demands of a fair trial." Louisell v. Director of Iowa Dep't of Corr., 178 F.3d 1019, 1022 (8th Cir. 1999) (quotations omitted).

Viewed with the instructions as a whole, Jury Instruction No. 23 did not confuse the jury or abrogate the jury's duty to find there was territorial jurisdiction over the murder. As the Iowa Supreme Court held, the instruction further explained Iowa law.

<u>Liggins II</u>, 557 N.W.2d at 267. The instruction did not constitute a fundamental defect

that denied Liggins a fair trial, and the Iowa Supreme Court's decision was not an unreasonable application of federal law.

IV. Fourth, Fifth, and Fourteenth Amendment. Liggins argues police officers seized, detained, and questioned him in violation of his Fourth, Fifth, and Fourteenth Amendment rights, and his statements and evidence impeaching his statements should have been suppressed. He argues the Iowa court incorrectly found the detention was voluntary.

Respondent contends this Court cannot review Liggins' Fourth Amendment claim because he had a full and fair opportunity in the State proceedings to litigate it. See Stone v. Powell, 428 U.S. 465, 494 (1976). Liggins does not contest Respondent's position regarding the Fourth Amendment; therefore, the Court will not address his grounds for relief under the Fourth Amendment.

To protect a suspect's Fifth Amendment right not to be "compelled in any criminal case to be a witness against himself," applicable to the states through the Due Process Clause of the Fourteenth Amendment, the United States Supreme Court in Miranda v. Arizona, 384 U.S. 436, 479 (1966), held that a person subject to custodial interrogation must be informed of the right to remain silent, that any statement made could be used against the suspect, and the person must be informed of the right to counsel and that counsel can be appointed before any questioning. The Supreme Court reaffirmed its

decision in Miranda in Dickerson v. United States, 530 U.S. 428, 444 (2000). Waiver of the privilege against self-incrimination under the Fifth Amendment must be made voluntarily, without any coercion. The waiver also must be made knowingly and intelligently, "with a full awareness both of the nature of the right being abandoned and the consequences of the decision to abandon it." Colorado v. Spring, 479 U.S. 564, 573 (1987) (citation omitted). A court may conclude a suspect waived rights as described in Miranda only if the "totality of the circumstances surrounding the interrogation' reveal both an uncoerced choice and the requisite level of comprehension." Id. (citation omitted).

Liggins argues the Iowa courts unreasonably determined the facts in ruling Liggins was not arrested and was not in custody during his interview with police on September 19, 1990. Liggins insists the courts relied on an officer's testimony that was blatantly inconsistent with testimony the officer gave in a suppression hearing in Illinois. Liggins argues his police interview was similar to that declared unconstitutional in <u>Dunway v. New York</u>, 442 U.S. 200, 218 (1979) (illegal detention occurred when officers located petitioner, took him into custody, did not tell him he was under arrest, but would have restrained him if he tried to leave). The trial court had before it the transcript of the officer's prior testimony that the officer was unsure if Liggins was handcuffed and in the back seat of the car, and the trial court observed the officer's later testimony that Liggins

was not cuffed and was in the back seat of the car. (1993 Tr. App. at 18-37.) An initial lack of specific recollection followed by a clearer recollection can, but does not require, a conclusion that a witness is not being truthful. The assessment of such evidence requires consideration of many factors relating to witness credibility. The trial court was in a better position than this Court to judge the credibility of the officer. Cf. United States v. Black, 88 F.3d 678, 680 (8th Cir. 1996) ("[b]ecause the district court is in a better position to assess the credibility of the witnesses, its determinations regarding credibility are 'virtually unreviewable on appeal.'" (quoting United States v. Heath, 58 F.3d 1271, 1275 (8th Cir. 1995)). Giving due deference to the original factfinder's credibility determination, the undersigned concludes the Iowa court did not unreasonably determine the crucial facts concerning Liggins' police interview. The Iowa courts' ruling that the detention was voluntary was not unreasonable, and Liggins' argument regarding the interview is not a basis for relief.

V. Confrontation and Cross-Examination. Liggins argues the Iowa court's admission of Lloyd Eston's deposition and prior trial testimony denied Liggins a fair trial and deprived Liggins of his Sixth Amendment right "to be confronted with the witnesses against him." U.S. Const. Amend. 6. The Iowa Supreme Court denied Liggins' argument, and the issue was preserved for habeas review.

After Lloyd Eston tried to testify at Liggins' first trial, the court found Eston was unavailable by reason of mental infirmity. The court allowed into evidence Eston's deposition testimony, which was taken two years after the murder and approximately six months before the first trial. Although defense counsel did not cross-examine Eston during the deposition, the trial court ruled that counsel had motivation to develop the testimony fully because Eston's lack of memory was evident at his deposition.

During the second trial, the prosecution, believing that Eston recently died, asked to have Eston's deposition read again to the jury. Over Liggins' objection, the court granted the prosecution's request. When the State learned Eston was indeed alive, it offered to present him for cross-examination unless the trial court found him mentally infirm. Liggins opted to submit the prior trial and deposition testimony to the jury and not cross-examine Eston. In <u>Liggins II</u>, the Iowa Supreme Court affirmed the trial court's ruling that under Iowa Rule of Evidence 804(a)(4), Eston was unavailable to testify based on his age, his admitted troubles with his memory, and his confused and disoriented demeanor. <u>Liggins II</u>, 557 N.W. 2d at 269. Citing <u>Ohio v. Roberts</u>, 448 U.S. 56, 66 (1980), the Iowa Supreme Court approved the trial court's use of Liggins' prior, reliable testimony. <u>Liggins II</u>, 557 N.W. 2d at 269.

Recently the United States Supreme Court overruled its decision in <u>Roberts.</u> In <u>Crawford v. Washington</u>, No. 02-9410, 2004 WL 413301, at *19 (U.S. Mar. 8, 2004),

the Supreme Court held that reliability, alone, of an out-of-court testimonial statement does not safeguard a defendant's Sixth Amendment right to confront his accuser. Instead, the crucial safeguard of the right to confrontation is an opportunity to cross-examine the accuser. <u>Id.</u> Testimonial out-of-court statements are barred unless the witness is unavailable and the defendant had a prior opportunity to cross-examine the witness. Id.

The Iowa Supreme Court's ruling comports with the new rule announced in Crawford. Eston's deposition is testimonial. Iowa Rule of Evidence 804(a)(4), like its federal counterpart, provides that a witness is unavailable if the declarant cannot testify "because of death or then existing physical or mental illness or infirmity." Iowa R. Evid. 804(a)(4); see also Fed. R. Evid. 804(a)(4). Counsel for Liggins was present at the deposition and had an opportunity to cross-examine Eston. Liggins does not rebut with "clear and convincing evidence," see 28 U.S.C. § 2254(e)(1), the factual findings supporting the Iowa courts' ruling that Eston was unavailable to testify in Liggins II and that Liggins' counsel had both the opportunity and motive to cross-examine Eston at the deposition. The Iowa courts did not unreasonably conclude Eston was "unavailable" for Liggins' second trial, and the Iowa courts did not unreasonably apply federal law as determined by the Supreme Court in allowing Eston's prior testimony.

VI. Sufficiency of the Evidence. Liggins argues there was insufficient evidence at trial to find him guilty beyond a reasonable doubt of Jennifer's murder. He challenges both the factual findings and the legal conclusions of the Iowa courts. The parties agree this issue was preserved for habeas review.

"[T]he Due Process Clause protects the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged." In re Winship, 397 U.S. 358, 364 (1970). A court reviewing whether there was sufficient evidence to convict must determine "whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." Jackson v. Virginia, 443 U.S. 307, 319 (1979). Federal habeas review adds another level of deference to the analysis: This court cannot grant a writ of habeas corpus unless the Iowa Supreme Court's determination regarding the sufficiency of the evidence is based on an unreasonable determination of the facts or an unreasonable application of In re Winship and Jackson. See Lockyer, 123 S. Ct. at 1173.

The Iowa Supreme Court reiterated in <u>Liggins II</u> what it held in <u>Liggins I</u>, that is, there was sufficient evidence to convict Liggins of murder. In particular, Liggins attacks the credibility of Frank Reising, who testified that Liggins confessed to Jennifer's murder while Reising and Liggins were cellmates. Liggins also insists his alleged confession to

Reising is not corroborated by sufficient evidence as required by Iowa law. Liggins challenges every factual finding in the following excerpt from <u>Liggins II</u>:

Liggins was seen near the liquor store while Jennifer was there. No witness saw Jennifer alive after she left the liquor store. At least two witnesses saw a car similar to Liggins['] near the school where Jennifer's burned body was found. Liggins' girlfriend smelled an odor of gasoline in his car the day after Jennifer's death, and police found a gas can in Liggins' car which bore his fingerprints. Finally, on different occasions Liggins gave false statements and information to investigators.

In addition to that testimony, additional evidence was presented at the second trial. A jury could find that after the police seized Liggins' car, they discovered moisture under the rear seat, indicating that the back seat area of the car had been washed. Also, a witness saw a gas can in the back seat of Liggins' car and smelled gas fumes when she walked by the car the day after the murder. Additionally, another witness heard rattling pipes coming from Liggins' motel room at about 4:00 a.m. the day after the murder, indicating that Liggins took a lengthy shower, which lasted approximately forty-five minutes.

<u>Liggins II</u>, 557 N.W.2d at 270.

Antonio Holmes testified he saw Liggins near the liquor store when Jennifer was buying gum on September 17, 1990. Liggins maintains Holmes' testimony was unreliable because Holmes was under the influence of alcohol when he identified Liggins at the police station. The next day Holmes returned to the station, sober, and indicated he was uncertain if he correctly identified Liggins. Liggins also suggests Holmes may have bargained with the State for reduced criminal charges in his own prosecution in exchange for his testimony.

Liggins argues the Supreme Court's statement that "at least two witnesses" saw a car like Liggins' was misleading because only two witnesses testified to seeing a car like Liggins' at the school. In addition, Liggins argues that both the witnesses, Lloyd Eston and Wanda Hughes, provided weak testimony. Liggins' car was a Peugeot, and one of the rear taillights shined more brightly than the other taillight. Eston testified via deposition that at about 8:15 p.m. or 8:30 p.m., he saw a car similar to Liggins' at the school where Jennifer's body was found, and he saw a person standing at the back of the car with the trunk and car doors open. Liggins faults Eston's testimony for not clearly identifying the date and place he saw the car and for testifying only that he was "pretty sure" he saw a car like Liggins' car, and it would be "stretching it" to say he could positively identify Liggins' car as the one he saw. Wanda Hughes' testimony varied from the first trial to the second. In the 1995 trial, she testified that at about 9:00 p.m. she saw a small fire and a foreign car with taillights similar to Liggins' from a different location than in her 1993 trial testimony. In her 1995 testimony, Hughes stated she had a clear view of the taillights; but in her 1993 testimony, she believed she did not have a clear view of the taillights because some bushes obstructed her view. Liggins argues the evidence at trial established that it was not unusual for there to be small fires in the dumping area where Jennifer's body was found. Liggins points out that Hughes was not sure of the date she saw the fire and car, her observation of the taillights was from three

blocks away, and she conceded on cross-examination that the taillights she saw were not different from other, American-made cars.

Liggins argues the evidence regarding the gas can and gas fumes was not credible, and the jury could not have reasonably found that Liggins' behavior after Jennifer's body was found corroborated his purported confession to Frank Reising. Liggins argues Rodney Sinclair was unsure of his testimony that Liggins took a long shower at about 4:00 a.m. the morning after the murder, and Sinclair's testimony was inconsistent with the testimony of Liggins' girlfriend, Brenda Adams, who said Liggins spent the night at her apartment. Liggins argues Donna Atkins gave incredible testimony that she saw Liggins' car during the time Liggins was at Adams' apartment. Furthermore, Liggins points out, Atkins' testimony that she saw a gas can in Liggins' car the morning after the murder and smelled gas fumes coming from the can, which was similar to the car police eventually seized, is inconsistent with Adams' testimony that Adams was using the car during the morning of September 18, 1990, and that Adams did not smell gas in the car on the evening of September 17, 1990.

Liggins argues that the evidence of moisture found in the padding of the car two weeks after it was seized was negated by evidence that rain water could have entered through a defective rear window in the car. Liggins argues the evidence of the moisture added nothing to the prosecution's case and encouraged the jury to engage in bald

speculation that Liggins tried to wash away evidence of Jennifer's murder. In fact, investigators found no physical traces of Jennifer's body in Liggins' car or apartment.

Liggins challenges the finding that he gave false statements and information to investigators on different occasions. First, Liggins states that he gave a statement to police on only one occasion, September 19, 1990. Furthermore, he maintains, police officers purposely did not maintain a copy of the interview and lied about whether a videotape machine was functioning when officers interviewed Liggins, and therefore no credence should be given to statements the police attributed to Liggins in the interview.

The jury had before it all the evidence Liggins highlights as well as other evidence the prosecution presented against Liggins. It was the jury's duty to weigh the credibility and value of all the evidence before it. <u>E.g.</u>, <u>United States v. Chavez</u>, 230 F.3d 1089, 1091 (8th Cir. 2000). While some of the evidence was less helpful to the prosecution than other evidence, the undersigned cannot say the Iowa Supreme Court unreasonably determined there was sufficient evidence to support the jury's verdict and its resolution of the facts.⁴

⁴ Liggins further faults the Iowa Supreme Court in <u>Liggins II</u> for stating that "[i]n addition to that [previously discussed] testimony, additional evidence was presented at the second trial." <u>Liggins II</u>, 557 N.W. 2d at 270. Liggins correctly observes that the "additional" evidence listed in <u>Liggins II</u> was presented during his first trial, however the undersigned concludes the Iowa Supreme Court's statement is not a basis for granting Liggins' petition.

VII. Brady v. Maryland. Liggins argues the State deliberately suppressed evidence in violation of Brady v. Maryland, 373 U.S. 83 (1963), regarding Sarah Klingsick, three witnesses who impeached the testimony of Donna Atkins, and a videotape of Jennifer's funeral showing Joe Glenn wearing a studded black leather jacket with long fringe. Liggins further argues the State knowingly allowed witnesses to give false testimony. The Iowa courts rejected Liggins' arguments on the merits except for Liggins' challenge to Christina Olson's testimony, which the Iowa Court of Appeals ruled was procedurally defaulted. Liggins III, 2000 WL 1827164, at *7. Because Liggins does not establish cause and prejudice to overcome his failure to preserve his claim regarding Olson's testimony, see Coleman, 501 U.S. at 750, this federal court will not review it.

The Iowa Court of Appeals' ruling sets forth the <u>Brady</u> rule as well as Iowa caselaw regarding knowing use of false testimony, which is substantially similar to the federal standard. <u>Liggins III</u>, 2000 WL 1827164, at *1-*7; <u>see also State v. Frazier</u>, 559 N.W.2nd 34, 42 (Iowa 1996) (quoting <u>United States v. Agurs</u>, 427 U.S. 97, 103-04 (1976) ("conviction obtained by the knowing use of perjured testimony is fundamentally unfair and must be set aside if there is any reasonable likelihood that the false testimony could have affected the judgment of the jury")). This Court will not duplicate the Iowa Court of Appeals' thorough analysis of Liggins' <u>Brady</u> claims and Liggins' claims that the prosecution knowingly presented false testimony. <u>Liggins III</u>, 2000 WL 1827164, at

*1-*7. However, this Court has carefully reviewed and considered the analysis provided by the Iowa appellate court. The Iowa Court of Appeals' ruling was a reasonable application of federal law as determined by the Supreme Court and a reasonable determination of the facts. See 28 U.S.C. § 2254(d)(1).

VIII. Newly Discovered Evidence. Liggins argues the Iowa Court of Appeals erred by refusing to grant him a new trial based on newly discovered evidence. During postconviction proceedings, Liggins identified the evidence requiring a new trial as testimony from Sarah Klingsick, videotape footage from Jennifer's funeral, recantation of Frank Reising's testimony, recantation of Antonio Holmes' testimony, and a confession by Joe Glenn to Jennifer's murder. He brought his claim of newly discovered evidence under Iowa law, and he cites only Iowa state law in support of his argument in this habeas action. (Petr's Br. at 101-05.) The Iowa Court of Appeals addressed each piece of new evidence, concluding that the new evidence probably would not have changed the result of his trial. Liggins III, 2000 WL 1827164, at *7-*9.

Recognizing that federal courts normally do not review freestanding claims of actual innocence, Liggins asks the Court to interpret Herrera v. Collins, 506 U.S. 390, 401 (1993), liberally and allow his "truly persuasive demonstration" of "actual innocence." In the alternative, Liggins asks the Court to treat the claim as one grounded in due process.

Liggins' state-law claim is not an independent basis for federal relief. As this Court indicated in its previous order, the Court of Appeals for the Eighth Circuit has held a freestanding claim of actual innocence is not, on its own, a reason to grant habeas relief. See Burton v. Dormire, 295 F.3d 839, 848 (8th Cir. 2002) (quoting Herrera, 506 U.S. at 400 ("Claims of actual innocence based on newly discovered evidence have never been held to state a ground for federal habeas relief absent an independent constitutional violation occurring in the underlying state criminal proceeding."). Consequently, this Court will not address Liggins' freestanding claim of actual innocence. Even if used as a gateway claim, this Court cannot conclude it is more likely than not that the jury would have acquitted Liggins in light of the new evidence.

SUMMARY

For the foregoing reasons, the Court finds no reason to reconsider its prior order denying further discovery and an evidentiary hearing, and the Court must deny and dismiss the petition brought pursuant to 28 U.S.C. § 2254. Petitioner's Supplement to Briefs and Motion to Reconsider Discovery and Evidentiary Hearing (Clerk's No. 69) is **denied**. The Petition for Writ of Habeas Corpus is **dismissed**.

IT IS SO ORDERED.

Dated this 24th day of March, 2004.

UNITED STATES DISTRICT COURT